

STATE OF SOUTH CAROLINA)	BEFORE THE
)	PUBLIC SERVICE COMMISSION
)	DOCKET NO: 2011-317-WS
In re:)	
Application of Kiawah Island Utility)	Motion to Dismiss
Company for Adjustment of Rates)	
)	

Petitioner Kiawah Island Community Association, Inc.¹ (“Petitioner” or “KICA”) moves this Commission to dismiss the Application of Kiawah Island Utility, Inc. (“KIU”), without prejudice and with leave to re-file. KICA would show the following² in support of its motion:

Background

Kiawah Development Partners (“KDP”) has stated its intent to sell KIU, either to the Town of Kiawah Island (“Town” or “TOKI”), or to a third party. Accordingly, under section 14(b)(ii) of the current Development Agreement between TOKI and KDP, the Town has the right of “first offer” to purchase KIU. (Exhibit A).³ In response to KDP’s notification to the Town of its intent to sell the utility, in August of 2011 the Town began the process of analyzing the viability of purchasing KIU. (Exhibit B).⁴ That process is still underway. A voter referendum on whether the Town should be given the power to effect a purchase of KIU is scheduled for October 25, 2011. (Exhibit B). According to the

¹ KICA is an association made up of approximately 10,000 members, who own approximately 4300 residential and commercial properties and are all customers and ratepayers of KIU.

² KICA reserves the right to amend and supplement its argument.

³ Available at http://www.kiawahisland.org/client_resources/development%20agreements/2005%20dev%20agreeme_00001.pdf (last accessed October 18, 2011). KICA would ask the Commission to take judicial notice of this agreement.

⁴ Available at http://www.kiawahisland.org/client_resources/updated%20kiawah%20island%20water%20sewer%20utility%20project%20timeline%20working.pdf (last accessed October 18, 2011). KICA would ask the Commission to take judicial notice of this document.

Town's acquisition schedule, the Town must advise KDP of its intention to exercise its right of "first offer" by November 9, 2011. (Exhibit B).

Argument

I. In Light of KIU's Proposed Sale, this Application is both Premature and, in part, Inappropriate.

KIU filed its Proposed Rate Schedule on August 4, 2011. According to statute, the Commission's order on this Application must be issued by February 4, 2012. S.C. Code § 58-5-240(C). The hearing in KIU's Application has been scheduled for November 20, 2011, and the Commission has set a schedule for submission of pre-filed testimony that begins October 20, 2011. The purchase of KIU by the Town would remove KIU's Application from the jurisdiction of the Commission, as it would be owned by a municipality. See S.C. Code § 58-5-30.

In its Application, KIU is also requesting that this Commission approve its plan to add a second water delivery line to its service territory. In view of the Commission's rules and regulations concerning additions to service facilities, this request is, at best, premature. As KIU is well aware, it can apply to the Commission for rate base recognition of new facilities at either the time when there is "construction work in progress" during the test year, or when those facilities become "used and useful".Hamm v. S. Carolina Pub. Serv. Comm'n, 309 S.C. 282, 291, 422 S.E.2d 110, 115 (1992); Southern Bell v. Public Service Comm'n, 270 S.C. 590, 600, 244 S.E.2d 278, 283 (1978). To seek Commission approval of a new service facility before any KIU expenditure has taken place is both premature and inappropriate.

II. The Likely Sale of KIU Creates Uncertainty Regarding the Efficacy of the Commission's Work.

Should KDP proceed with its announced intention to sell KIU, there is certainly a clear question as to whether or not this Commission would have jurisdiction to enforce the provisions of any orders it might issue addressing this Application on the utility's purchaser. It is clear that, should the Town decide to purchase KIU, it would have the authority to adopt, reject, or modify any rate changes ordered by the Commission, as well as the right to decide whether or not to proceed with construction of the second water service facility. Because of KDP's stated intent to sell KIU, there exists a substantial likelihood that the efforts of the Commission to address this Application on the currently established schedule could be futile, and a significant waste of the Commission's resources. Such an outcome would also be contradictory to the goal of the legislature in creation of the Commission. Cf. Duvall v. SCB&CB, 377 S.C. 36, 42, 659 S.E. 2d 125, 128 (2008) ("The Court must presume the Legislative intended its statutes to accomplish something and did not intend a futile act.").

III. No Party Shall be Harmed by Dismissal of this Application

Dismissal of this action without prejudice during the pendency of the sale of KIU will neither cause KIU immediate financial harm, nor end the hope of a future rate adjustment. The acquisition schedule of the Town (Exhibit B, see also Exhibit C),⁵ provides a clear timeline for a decision on purchasing KIU as well as a clear delineation of the period that KIU's Application should not be considered. However, as Petitioner has shown here, the potential for any sale of KIU by its parent, KDP, clearly overhangs

⁵ Exhibit C is available at http://www.kiawahisland.org/client_resources/columbia-1559268-v2-powerpoint%20on%20acquisition%20092711.pdf (last accessed October 24, 2011). KICA would ask the Commission to take judicial notice of this document.

this proceeding. That potential sale to a variety of new owners could make moot all of the efforts of this Commission and participants in this case to arrive at a fair resolution of KIU's Application. Absent this Application, KIU will continue to earn its authorized return level and, as the Commission will recall, KIU can and does have the authority to pass through to ratepayers any increased costs for the acquisition of its water supplies through the "Purchased Water Adjustment" procedure approved by the Commission in Orders 2002-285 and 2002-517 in KIU's last rate case. Thus, there is little risk of financial harm to KIU while the question of its potential sale remains open.

Conclusion and Prayer for Relief

In order to conserve taxpayer dollars and legal fees for all parties involved, and in order to prevent the Commission from committing futile acts, it is in the interest of all involved to dismiss this action without prejudice and with leave to re-file until such time as KIU's ownership can be finalized.⁶

[signature page follows]

⁶ **In the alternative**, the Petitioner asks this Commission to hold these proceedings in abeyance until such time as KIU's ownership can be finalized.

/s/ Jason Scott Luck
John P. Seibels, Jr.
jseibels@seibelsfirm.com
Jason Scott Luck
jluck@seibelsfirm.com
SEIBELS LAW FIRM, P.A.
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777 (O)
843.722.6781 (F)
**Attorneys for Petitioner Kiawah
Island Community Association,
Inc.**

Charleston, South Carolina
24 October 2011

CERTIFICATE OF SERVICE
2011-317-WS

I, the undersigned, do hereby certify that I have this 24th day of October, 2011, filed a copy of Petitioner KICA's Motion to Dismiss via the Public Service Commission of South Carolina's electronic filing system, and on the 25th day of October, 2011 emailed and mailed paper copies via the U.S. Mail, first class, postage prepaid, to the following addresses:

Michael A. Molony, Esquire
Young Clement Rivers, LLP
28 Broad Street
P.O. Box 993 Charleston, SC 29402
mmolony@ycrlaw.com

G. Trenholm Walker, Esquire
Pratt-Thomas, Pearce, Epting, & Walker
P.O. Drawer 22247
Charleston, SC 29413
gtw@p-tw.com

Jeffrey M. Nelson, Esquire
Shannon Bowyer Hudson, Esquire
Counsel, Office of Regulatory Staff
1401 Main St., Suite 900
Columbia, SC 29201
jnelson@regstaff.sc.gov
shudson@regstaff.sc.gov

/s/ Jason Scott Luck